

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 831 of 1985

with

CRIMINAL APPEAL No 298 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? NO.
2. To be referred to the Reporter or not? NO.
3. Whether Their Lordships wish to see the fair copy of the judgement? NO.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO.
5. Whether it is to be circulated to the Civil Judge? NO.

STATE OF GUJARAT

Versus

JAYANTILAL KESHAVLAL MODI

Appearance:

1. Criminal Appeal No. 831 of 1985
MR S.R.Divetia, APP for Petitioner
MR YS LAKHANI, for Respondent
2. Criminal AppealNo 298 of 1986
MR BP TANNA for Petitioner
MR YS LAKHANI for Respondent No. 1
MR SR Divetia, for respondent No.2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 25/09/98

ORAL JUDGEMENT

1. Criminal Appeal No.298/86 is filed by the Food Inspector, Municipal Corporation, and Criminal Appeal No.831 of 1985 is filed by the State of Gujarat, challenging the judgment and order of acquittal dated 30-1-85, passed by the learned Additional Sessions Judge, Court No.3, Ahmedabad, in Criminal Appeal No.119 of 1984, whereby the learned Addl. Sessions Judge set aside the order of conviction recorded by learned Metropolitan Magistrate, Court No.8, Ahmedabad, against the respondent Jayantilal Keshavlal Modi for the offence punishable under Section 7 (1), 16 (1) (a) (i) of the Food Adulteration Act (to be referred to as " the Act ") in Criminal Case No.100/82, sentencing him S.I. for 6 months' and fine of Rs.1,000/-, in default, further S.I. for one month.

2. Brief facts of the prosecution case are as under :

On 17-5-82 at about 9-00 a.m., Mr. Raval, Food Inspector of Municipal Corporation along with his peon Surabhai Bhanabhai went to the shop of the respondent who was carrying grocery shop in Sarangpur area. The Food Inspector called upon two panchas and in their presence collected the samples of coriander (Dhana) powder. After following the due procedure of sealing the sample of coriander powder, the complainant sent the said sample to the Public Analyst for analysis. As per the report of the Public Analyst, the sample of coriander did not conform the standards prescribed under the Act and the Rules. Thereafter, the Food Inspector Mr. Raval filed complaint against the respondent-Jayantilal Keshavlal Thakkar, in the court of learned Metropolitan Magistrate, Ahmedabad, which came to be registered as Criminal Case No.100/82. The report of the Public Analyst was served on the respondent-Jayantilal Keshavlal Thakkar. On 13-9-82, the respondent-accused filed an application in the court of learned Metropolitan Magistrate, Ahmedabad, requesting to send the sample of coriander powder to Central Food Laboratory, Pune.

3. Thereafter, plea of the accused was recorded. The prosecution in support of his case examined Food Inspector Mr. B.T.Raval and peon Surabhai Bhanabhai. The respondent was questioned generally and his statement came to be recorded by the learned Metropolitan Magistrate under Section 313 of the Code of Criminal Procedure. The respondent admitted that the Food Inspector has collected the sample from his shop, but he stated that the said sample of coriander was not adulterated. The learned Metropolitan Magistrate, Court No.8, after hearing the learned advocates of both the

parties convicted the respondent for the offence punishable u/S. 7 (1), 16 (1) (a) (i) of the Act and sentenced him to undergo S.I. for 6 months' and fine of Rs.1,000/-, in default, further S.I. for one month.

4. The respondent aggrieved by the order of conviction and sentence, recorded by the learned Metropolitan Magistrate, Court No.8, Ahmedabad, in Criminal Case No.100/82, filed Criminal Appeal No.119/84 in the Court of City Sessions Judge, Ahmedabad. The said appeal was heard by the learned Addl. Sessions Judge, Court No.3, Ahmedabad, who by his judgment and order dated 30-1-85, allowed the appeal by setting aside the judgment and order of conviction dated 31-5-84, passed by the learned Metropolitan Magistrate, Court No.8, Ahmedabad. The learned Addl. Sessions Judge, Ahmedabad, acquitted the respondent-accused mainly on the ground that the Central Food Laboratory had carried out the test by microscopic examination which is not permitted under the Act and under the Rules framed therein.

5. The State of Gujarat and the original complainant has filed these two appeals, challenging the order of acquittal, recorded by the learned Addl. Sessions Judge, Court No.3, Ahmedabad, in Criminal Appeal No.119/84.

6. Learned A.P.P. Mr. S.R. Divetia and learned senior counsel Mr. B.P.Tanna has taken me through the entire evidence on record and submitted that when the report of the Public Analyst and the Central Food Laboratory clearly showed that the sample of coriander powder was adulterated, the learned Addl. Sessions Judge should have confirmed the order of conviction recorded by the learned Metropolitan Magistrate, Court No.8, Ahmedabad. It is submitted that the Food Inspector had scrupulously followed the procedure while collecting the sample and sending it for analysis to the Public Analyst, and therefore, it should be held that the prosecution had proved the offence lodged against the respondent. Lastly it is submitted that as per the report of the Central Food Laboratory, the sample of coriander powder did not conform the standards prescribed under the Act and Rules, and therefore, the accused-respondent should have been convicted by confirming the order of conviction and sentence, recorded by the learned Metropolitan Magistrate, Court No.8, Ahmedabad.

7. Learned counsel for the respondent Mr. Y.S.Lakhani has submitted that Central Food Laboratory had carried out the analysis by using the microscopic test which is not permissible under the Act, and

therefore, the learned Addl. Sessions Judge was justified in acquitting the respondent by setting aside the order of conviction and sentence, recorded by the learned Metropolitan Magistrate. Learned counsel for the respondent has submitted that when the test was not carried as per the rules, the order of acquittal should be confirmed and the appeals should be dismissed.

8. Learned counsel for the respondent in support of his submission has drawn my attention on a decision rendered by the Apex Court in case of Jagdish Chandra v. State of Uttar Pradesh, A.I.R. 1981 SC 1233. In the above decision, it was held by the Apex Court that the accused was convicted for selling adulterated "dalchini" (cinnamon) article, but the Public Analyst had only performed microscopic test and not the chemical test for analysing the adulterated sample, the accused could not be convicted on the report of the analysis as the prosecution could not be said to have proved beyond reasonable doubt that what the accused sold to Food Inspector was in fact cinnamon (dalchini).

9. Relying on the above decision, learned counsel for the respondent submitted that the sum and substance found in the report of the Central Food Laboratory, coriander powder cannot be ascertained with any degree of accuracy by mere ocular examination under the microscopic. That the substance namely starch found in the sample of coriander powder can only be detected after a chemical test carried out as prescribed under the Act and Rules. In my view, the decision of the Supreme Court in Jagdish Chandra's case (Supra) will apply with all fours to the facts of the present case. The learned Addl. Sessions Judge had also referred to several decisions of the Supreme Court and various High Courts and has concluded that the prescribed chemical test was not carried out to find out whether the sample of coriander powder was adulterated or not. The learned Addl. Sessions Judge further recorded that the use of microscopic test in carrying out the analysis was contrary to the provisions of Rules and Act, and therefore, the conviction was liable to be set aside.

10. In my view, the learned Addl. Sessions Judge was justified in acquitting the accused. When the prosecution case is based on the report of the Central Food Laboratory which is contrary to the provisions of Act and Rules, no conviction can be based for the offence alleged against the respondent-accused. Therefore, both these appeals deserve to be dismissed.

11. As a result of the foregoing discussions, both these appeals are dismissed.

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